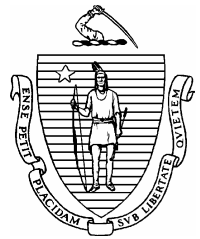


Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss

COMMISSION ADJUDICATORY
DOCKET NO. 06-0008

IN THE MATTER
OF
PETER PENDER

DISPOSITION AGREEMENT

This Disposition Agreement is entered into between the State Ethics Commission and Peter Pender pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in Superior Court, pursuant to G.L. c. 268B, §4(j).

On March 16, 2006, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Pender. The Commission concluded its inquiry and, on June 8, 2006, found reasonable cause to believe that Pender violated G.L. c. 268A, §§19 and 23(b)(3).

The Commission and Pender now agree to the following findings of fact and conclusions of law:

Findings of Fact

1. In February 2002, Pender became the full-time Clinton building inspector. He remained building inspector until April 2006.
2. At all relevant times, Pender and his spouse owned 112 Boylston Street in Clinton.
3. On October 5, 2004, Pender's wife submitted a building permit application and associated construction plans for 112 Boylston Street in Clinton.
4. Pender reviewed the plans and the estimated \$84,000 construction cost cited in the building permit application to determine that the estimated cost was reasonable. Based upon that estimate, he calculated the building permit fee to be \$672. He also reviewed the plans for code compliance. There is no evidence that Pender improperly reviewed the estimated construction cost or improperly calculated the building permit fee.
5. On October 12, 2005, as building inspector, Pender signed a building permit for 112 Boylston Street in Clinton.

Conclusions of Law

6. Section 19 of G.L. c. 268A prohibits a municipal employee from participating¹ as such an employee in a particular matter² in which, to his knowledge, he or an immediate family member³ has a financial interest.⁴
7. The decision whether to issue a building permit for 112 Boylston Street was a particular matter.

8. Pender participated personally and substantially in that matter by reviewing the application and associated plans, and issuing the building permit.

9. Pender's wife is an immediate family member as that term is defined in G.L. c. 268A, §1.

10. At the time he issued the permit, Pender and his wife had a financial interest in the building permit because the permit was for construction of their own home. Pender and his wife also had a financial interest in the \$672 building permit fee. Consequently, Pender knew he and his wife had a financial interest in the building permit when he participated in issuing the permit in October 2004.

11. Therefore, Pender violated § 19 by issuing a building permit for his own home.

Resolution

In view of the foregoing violation of G.L. c. 268A by Pender, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Pender:

- (1) that Pender pay to the Commission the sum of \$2,000.00 as a civil penalty for violating G.L. c. 268A, §19;
- (2) that Pender waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: June 13, 2006

¹ "Participate" means to participate in agency action or in a particular matter personally and substantially as a state, county or municipal employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise. G.L. c. 268A, § 1(j).

² "Particular matter" means any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property. G.L. c. 268A, § 1(k).

³ "Immediate family" means the employee and his spouse, and their parents, children, brothers and sisters. G.L. c. 268A, §1(e).

⁴ "Financial interest" means any economic interest of a particular individual that is not shared with a substantial segment of the population of the municipality. See *Graham v. McGrail*, 370 Mass. 133 (1976). This definition has embraced private interests, no matter how small, which are direct, immediate or reasonably foreseeable. See *EC-COI-84-98*. The interest can be affected in either a positive or negative way. *EC-COI-84-96*.